

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 80 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF DECD. MANSUKHLAL JAYANTILAL PATEL

Versus

VINODKUMAR JAYANTILAL PATEL

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Appearance:

MR SM SHAH for appellants

MR RJ OZA for Respondent Nos 1 & 2

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the respective parties. Leave to amend so as to delete respondent nos.3 and 4.
2. The appeal is admitted on the substantial question of law discussed hereinafter.
3. Mr. R.J. Oza appears for respondent nos.1 and 2

and waives service on their behalf in the appeal.

4. At the joint request of learned counsel for the parties this appeal is taken up for hearing today.

5. The short question involved in the present appeal is whether on the facts and circumstances of the case the lower appellate court was justified in dismissing the appeal simply on the ground that it had no jurisdiction to hear and decide the same, or whether the lower appellate court ought to have returned the memo of appeal to the appellant therein for presenting the same to the appropriate court.

6. As a result of the discussion during the course of hearing a consensus has been arrived at between the learned counsel. I am also of the opinion in support of this consensus that once it is found by the lower appellate court that it did not have jurisdiction to entertain and hear the appeal merely on account of the pecuniary jurisdiction, it was not open to the said court to dismiss the appeal on a wide and blanket ground of want of jurisdiction. To take such a view would tantamount to dismissing the appeal on merits. In consonance with the consensus arrived at between the learned counsel, I am of the opinion that the lower appellate court ought to have returned the memo of appeal to the appellant for presentation to the appropriate court.

7. In the premises aforesaid, the judgement and decree of the lower appellate court is quashed and set aside. The appeal is restored to file. The lower appellate court is directed to return the memo of appeal to the appellant for presentation to the proper court.

8. This appeal is accordingly allowed with no order as to costs.

9. Decree accordingly.

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